

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ROBERT PIPER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 05-341-SLR
	)	
RICK KEARNEY, DAVID JACOBS,	)	
and D.O.C.,	)	
	)	
Defendants.	)	

**O R D E R**

At Wilmington this ~~6<sup>th</sup>~~ day of April, 2006, defendants having filed a motion to dismiss/summary judgment and an accompanying memorandum on March 2, 2006 (D.I. 19, 20) and plaintiff having filed a motion for extension of time to respond to said motion;

IT IS ORDERED that:

1. Because matters outside of the pleadings were presented to the court in support of said motion to dismiss, the court will review the motion as one for summary judgment pursuant to Fed. R. Civ. P. 12(b) and 56(b).

2. Because defendant relies upon an affidavit in support of the motion, the averments of fact in the affidavit shall be accepted as true, pursuant to Fed. R. Civ. P. 56(e), for the purpose of deciding the motion unless plaintiff timely files a counter-affidavit or statement under penalty of perjury refuting said averments.

3. Plaintiff's motion (D.I. 22) is granted and briefing on the motion for summary judgment shall proceed in accordance with the following schedule:

a) Plaintiff shall file and serve a response to defendants' motion (including an answering brief and accompanying affidavits, exhibits, etc., if any) on or before **May 5, 2006**.

b) Defendants may file and serve a reply brief on or before **May 19, 2006**.

  
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United States District Judge